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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-352

EDUARDO CRUZ
14829 Sherman Way, Unit 4
Van Nuys, California 91405

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about April 13, 2005, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Eduardo Cruz (Respondent). On or about February 8, 2005, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on June 3, 2005.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 " . . .

17 "(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction.

20 " . . .

21 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
22 substantially related to the qualifications, functions, or duties of a respiratory care
23 practitioner. . . ."

24 8. Section 3752 of the Code states:

25 "A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere made to a charge of any offense which substantially relates to the
27 qualifications, functions, or duties of a respiratory care practitioner is deemed to be a
28 conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
3 order granting probation is made suspending the imposition of sentence, irrespective
4 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
5 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
6 the verdict of guilty, or dismissing the accusation, information, or indictment.”

7 9. California Code of Regulations, Title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or
9 act shall be considered to be substantially related to the qualifications, functions or
10 duties of a respiratory care practitioner, if it evidences present or potential unfitness
11 of a licensee to perform the functions authorized by his or her license or in a manner
12 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
13 include but not be limited to those involving the following:

14 “ . . .

15 “(b) Conviction of a crime involving fiscal dishonesty, theft, or larceny.

16 “(c) Conviction of a crime involving driving under the influence or reckless
17 driving while under the influence. . . .”

18 COST RECOVERY

19 10. Section 3753.5, subdivision (a) of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the
21 board, the board or the administrative law judge may direct any practitioner or applicant
22 found to have committed a violation or violations of law to pay to the board a sum not to
23 exceed the costs of the investigation and prosecution of the case."

24 11. Section 3753.7 of the Code states:

25 "For purposes of the Respiratory Care Practice Act, costs of prosecution
26 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
27 other administrative, filing, and service fees."

28 12. Section 3753.1, subdivision (a) of the Code states:

1 "An administrative disciplinary decision imposing terms of probation may
2 include, among other things, a requirement that the licensee-probationer pay the monetary
3 costs associated with monitoring the probation."

4 FIRST CAUSE FOR DENIAL OF APPLICATION

5 (Conviction of a Crime)

6 13. Respondent's application is subject to denial under Code sections
7 3750, subdivision (d), 3752, and California Code of Regulations, Title 16, section
8 1399.370, subdivisions (b) and (c), in conjunction with section 3732, subdivision (b), in that
9 respondent was convicted of crimes substantially related to the qualifications, functions and
10 duties of a respiratory care practitioner. The circumstances are as follows:

11 September 2, 2004, Conviction

12 A. On September 2, 2004, in a criminal proceeding entitled *People v.*
13 *Eduardo Cruz, Jr.*, in Superior Court, Los Angeles County, Case No. 4BU02192,
14 respondent was convicted upon his plea of nolo contendere to the crime of driving
15 with .08% or higher blood alcohol level, a violation of Vehicle Code section
16 23152(b). He was placed on probation for three years, and was ordered to complete
17 a 30 month alcohol treatment program, pay fines of \$1,095.00 or perform 20 days of
18 Cal Trans service, and his driving privilege was restricted for 90 days.

19 B. The facts and circumstances surrounding this offense are as follows:

20 On July 5, 2004, Burbank police officers made an enforcement stop
21 after observing respondent driving his vehicle on the wrong side of the road and
22 then driving at an excessive rate of speed on a residential street. While talking to
23 respondent, one of the officers detected a strong odor of alcohol on his breath. He
24 also observed that respondent's eyes were bloodshot and watery, and his speech was
25 slow and thick. He failed the field sobriety tests. Respondent's blood alcohol
26 content was .13%

27 Respondent was arrested and charged with driving under the
28 influence of alcohol, a violation of Vehicle Code section 23152(a) and driving with

1 .08% or higher blood alcohol level, a violation of Vehicle Code section 23152(b).

2 September 12, 2003, Conviction

3 C. On September 12, 2003, in a criminal proceeding entitled *People v.*
4 *Eduardo Cruz*, in Superior Court, Los Angeles County, Case No. 3BU01620,
5 respondent was convicted upon his plea of nolo contendere to the crime of trespass,
6 injury to property, a misdemeanor, a violation of Penal Code section 602(j). He was
7 placed on probation for three years, and was ordered to serve one day in county jail,
8 pay fines of \$1,095.00, and perform ten days of Cal Trans service.

9 D. The facts and circumstances surrounding this offense are as follows:

10 On May 5, 2003, Burbank police officers responded to a report of a
11 burglary at a market. Three males entered the market, selected several six-packs of
12 beer, ran out of the market without paying for the beer, and then got into a waiting
13 vehicle driven by respondent. A witness wrote down the vehicle license plate
14 number and the police officers drove to respondent's address. The officers searched
15 respondent's residence and located the six-packs of beer that had been stolen.
16 Respondent was arrested and charged with burglary, a violation of Penal Code 459
17 and theft of property, a violation of Penal Code section 484(a).

18 SECOND CAUSE FOR DENIAL OF APPLICATION

19 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

20 14. Respondent's application is subject to denial under sections 3750,
21 subdivision (j), in conjunction with section 3732, subdivision (b), in that he committed a
22 fraudulent, dishonest or corrupt act that is substantially related to the qualifications,
23 functions, or duties of a respiratory care practitioner. The facts and circumstances, set forth
24 in Paragraph 13, subparagraphs C and D of this Statement of Issues, are incorporated herein
25 by reference.

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27
28 PRAYER

1 WHEREFORE, Complainant requests that a hearing be held on the matters
2 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

3 15. Denying the application of Eduardo Cruz for a Respiratory Care
4 Practitioner;

5 16. Directing Eduardo Cruz to pay the Respiratory Care Board of
6 California the costs of the investigation and enforcement of this case, and if placed on
7 probation, the costs of probation monitoring;

8 17. Taking such other and further action as deemed necessary and
9 proper.

10 DATED: October 20, 2005

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12 Original signed by Liane Zimmerman for:
13 STEPHANIE NÚÑEZ
14 Executive Officer
15 Respiratory Care Board of California
16 Department of Consumer Affairs
17 State of California
18 Complainant
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